

## CHAPTER 148

Substitute for SENATE BILL No. 485

AN ACT concerning certain municipalities; relating to buildings and other construction projects; amending K.S.A. 19-214 and K.S.A. 2007 Supp. 68-521 and repealing the existing sections.

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. Sections 2 through 6, and amendments thereto, shall be known and may be cited as the county alternative project delivery building construction procurement act.

New Sec. 2. (a) “Alternative project delivery” means an integrated comprehensive building design and construction process, including all procedures, actions, sequences of events, contractual relations, obligations, interrelations and various forms of agreement all aimed at the successful completion of the design and construction of buildings and other structures whereby a construction manager or general contractor or building design-build team is selected based on a qualifications and best value approach.

(b) “Ancillary technical services” include, but shall not be limited to, geology services and other soil or subsurface investigation and testing services, surveying, adjusting and balancing air conditioning, ventilating, heating and other mechanical building systems and testing and consultant services that are determined by the agency to be required for the project.

(c) “Architectural services” means those services described by subsection (e) of K.S.A. 74-7003, and amendments thereto.

(d) “Best value selection” means a selection based upon objective criteria related to price, features, functions, life-cycle costs and other factors.

(e) “Board” means the board of county commissioners or its designees.

(f) “Building construction” means furnishing labor, equipment, material or supplies used or consumed for the design, construction, alteration, renovation, repair or maintenance of a building or structure. Building construction does not include highways, roads, bridges, dams, turnpikes or related structures, or stand-alone parking lots.

(g) “Building design-build” means a project for which the design and construction services are furnished under one contract.

(h) “Building design-build contract” means a contract between the county and a design-builder to furnish the architecture or engineering and related design services required for a given public facilities construction project and to furnish the labor, materials and other construction services for such public project.

(i) “Construction services” means the process of planning, acquiring, building, equipping, altering, repairing, improving, or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property, excluding highways, roads, bridges, dams or related structures, or stand-alone parking lots.

(j) “Construction management at-risk services” means the services provided by a firm which has entered into a contract with the county to be the construction manager or general contractor for the value and schedule of the contract for a project, which is to hold the trade contracts and execute the work for a project in a manner similar to a general contractor, and which is required to solicit competitive bids for the trade packages developed for the project and to enter into the trade contracts for a project with the lowest responsible bidder therefor. Construction management at-risk services may include, but are not limited to, scheduling, value analysis, system analysis, constructability reviews, progress document reviews, subcontractor involvement and prequalification, subcontractor bonding policy, budgeting and price guarantees and construction coordination.

(k) “Construction management at-risk contract” means the contract whereby the county acquires from a construction manager or general contractor a series of preconstruction services and an at-risk financial obligation to carry out construction under a specified cost agreement.

(l) “Construction manager or general contractor” means any individual, partnership, joint venture, corporation or other legal entity who is a member of the integrated project team with the county, design profes-

sional and other consultants that may be required for the project, who utilizes skill and knowledge of general contracting to perform preconstruction services and competitively procures and contracts with specialty contractors assuming the responsibility and the risk for construction delivery within a specified cost and schedule terms including a guaranteed maximum price.

(m) "Design-builder" means any individual, partnership, joint venture, corporation or other legal entity that furnishes the architectural or engineering services and construction services, whether by itself or through subcontracts.

(n) "Design criteria consultant" means a person, corporation, partnership or other legal entity duly registered and authorized to practice architecture or professional engineering in this state pursuant to K.S.A. 74-7003, and amendments thereto, and who is employed by contract to the county to provide professional design and administrative services in connection with the preparation of the design criteria package.

(o) "Design criteria package" means performance-oriented specifications for the public construction project sufficient to permit a design-builder to prepare a response to the county's request for proposals for a building design-build project.

(p) "Engineering services" means those services described by subsection (i) of K.S.A. 74-7003, and amendments thereto.

(q) "Guaranteed maximum price" means the cost of the work as defined in the contract.

(r) "Parking lot" means a designated area or parking structure for parking motor vehicles. A parking lot included as part of a building construction project shall be subject to the provisions of this act. A parking lot designed and constructed as a stand-alone project shall not be subject to the provisions of this act.

(s) "Preconstruction services" means a series of services that can include, but are not necessarily limited to: Design review, scheduling, cost control, value engineering, constructability evaluation and preparation and coordination of bid packages.

(t) "Project services" means architectural, engineering services, land surveying, construction management at-risk services, ancillary technical services or other construction-related services determined by the county to be required by the project.

(u) "Public construction project" means the process of designing, constructing, reconstructing, altering or renovating a public building or other structure. Public construction project does not include the process of designing, constructing, altering or repairing a public highway, road, bridge, dam, turnpike or related structure.

(v) "Stipend" means an amount paid to the unsuccessful and responsive proposers to defray the cost of submission of phase II of the building design-build proposal.

New Sec. 3. (a) Notwithstanding any other provision of the law to the contrary, the board of county commissioners is hereby authorized to institute an alternative project delivery program whereby construction management at-risk or building design-build procurement processes may be utilized on public projects pursuant to this act. This authorization for construction management at-risk and building design-build procurement shall be for the sole and exclusive use of planning, acquiring, designing, building, equipping, altering, repairing, improving or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property, but shall not include highways, roads, bridges, dams or related structures or stand-alone parking lots.

(b) The board may only approve those projects or programs for which the use of alternative project delivery procurement process is appropriate. In making such determination, the board may consider the following factors:

(1) The likelihood that the alternative project delivery method of procurement selected will serve the public interest by providing substantial savings of time or money over the traditional design-bid-build delivery process.

(2) The ability to overlap design and construction phases is required to meet the needs of the end user.

(3) The use of an accelerated schedule is required to make repairs resulting from an emergency situation.

(4) The project presents significant phasing or technical complexities,

or both, requiring the use of an integrated team of designers and constructors to solve project challenges during the design or preconstruction phase.

(5) The use of an alternative project delivery method will not encourage favoritism in awarding the public contract or substantially diminish competition for the public contract.

(c) When a request is made for alternative delivery procurement by the county, the county shall publish a notice in the official county newspaper that the board will be holding a public meeting with the opportunity for comment on such request. Notice shall be published at least 15 days prior to the hearing.

(d) If the board finds that the project does not qualify for the alternative project delivery methods included under this act, then the construction services for such project shall be obtained pursuant to statute or to the procedures permitted by law.

New Sec. 4. Construction management at-risk project delivery procedures shall be conducted as follows:

(a) The board shall determine the scope and level of detail required to permit qualified construction manager or general contractors to submit construction management at-risk proposals in accordance with the request for proposals given the nature of the project.

(b) Prior to completion of the construction documents, or as early as the initiation of the project, the construction manager or general contractor shall be selected. The project design professional may be employed or retained by the board to assist in the selection process.

(c) The county shall publish a notice of the request for qualifications and proposals for the required project services at least 15 days prior to the commencement of such requests in the official county newspaper and in such other appropriate manner as may be determined by the county.

(d) The board shall solicit proposals in a three stage qualifications based selection process. Phase I shall be the solicitation of qualifications and prequalifying a short list of construction managers or general contractors to advance to phase II. Phase II shall be the solicitation of a request for proposal for the project, and phase III shall include an interview with each proposer to present their qualifications and answer questions.

(1) Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to:

(A) Similar project experience;

(B) experience in this type of project delivery system;

(C) references from design professionals and owners from previous projects;

(D) description of the construction manager or general contractor's project management approach;

(E) financial statements; and

(F) bonding capacity. Firms submitting a statement of qualifications shall be capable of providing a public works bond in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bonding capacity to the board with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection.

(2) The board shall evaluate the qualifications of all proposers in accordance with the instructions of the request for qualifications. The board shall prepare a short list containing a minimum of three and maximum of five qualified firms, which have the best and most relevant qualifications to perform the services required of the project, to participate in phase II of the selection process. If the board receives qualifications from less than four proposers, all proposers shall be invited to participate in phase II of the selection process. The board shall have discretion to disqualify any proposer that, in the board's opinion, lacks the minimal qualifications required to perform the work.

(3) Phase II of the process shall be conducted as follows:

(A) Prequalified firms selected in phase I shall be given a request for proposal. The request for proposal shall require all proposers to submit a more in depth response including, but not be limited to:

(i) Company overview;

(ii) experience or references, or both, relative to the project under question;

(iii) resumes of proposed project personnel;

- (iv) overview of preconstruction services;
- (v) overview of construction planning;
- (vi) proposed safety plan;
- (vii) fees, including fees for preconstruction services, fees for general conditions, fees for overhead and profit and fees for self-performed work, if any.

(4) Phase III shall be conducted as follows:

(A) Once all proposals have been submitted, the board shall interview all of the proposers. Interview presentation scores shall not account for more than 50% of the total possible score.

(B) The board shall select the firm providing the best value based on the proposal criteria and weighting factors utilized to emphasize important elements of each project. All scoring criteria and weighting factors shall be identified by the board in the request for proposal instructions to proposers. The board shall proceed to negotiate with and attempt to enter into contract with the firm receiving the best total score to serve as the construction manager or general contractor for the project.

(C) If the board determines, that it is not in the best interest of the county to proceed with the project pursuant to the proposals offered, the board shall reject all proposals. If all proposals are rejected, the board may solicit new proposals using different design criteria, budget constraints or qualifications.

(D) The contract to perform construction management at-risk services will typically be awarded in phases; preconstruction followed by one or more amendments for construction. The contract form will be a cost plus guaranteed maximum price contract. All savings under the guaranteed maximum price may return to the county as defined in the request for proposal.

(E) The board or construction manager at-risk, at the board's discretion, shall publish a construction services bid notice as may be determined by the county. Each construction services bid notice shall include the request for bids and other bidding information prepared by the construction manager or general contractor and the county. The county may allow the construction manager or general contractor to self-perform construction services provided the construction manager or general contractor submits a bid proposal under the same conditions as all other competing firms. At the time for opening the bids, the construction manager or general contractor shall evaluate the bids and shall determine the lowest responsible bidder except in the case of self-performed work for which the county shall determine the lowest responsible bidder. The construction manager or general contractor shall enter into a contract with each firm performing the construction services for the project. All bids will be available for public view.

New Sec. 5. Building design-build project delivery procedures shall be conducted as follows:

(a) The board shall determine the scope and level of detail required to permit qualified persons to submit building design-build qualifications and proposals in accordance with the county requirements given the nature of the project.

(b) The board shall solicit proposals in a three-stage process. Phase I shall be the solicitation of qualifications of the building design-build team. Phase II shall be the solicitation of a technical proposal including conceptual design for the project. Phase III shall be the proposal of the construction cost.

(1) The board shall review the submittals of the proposers and assign points to each proposal as prescribed in the instructions of the request for proposal.

(2) Notice of requests for qualifications shall be advertised and published in the official county newspaper. Notification to include a description of the project and the procedures for submittal.

(3) The board shall establish in the request for qualifications a time, place and other specific instructions for the receipt of qualifications. Qualifications not submitted in strict accordance with such instructions shall be subject to rejection.

(4) A request for qualifications shall be prepared for each building design-build contract containing at minimum the procedures to be followed for each of the three phases in the process for submitting proposals, the criteria for evaluation of proposals and their relative weight and the procedures for making awards.

(c) Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to, the following:

(1) Demonstrated ability to perform projects comparable in design, scope and complexity.

(2) References of owners for whom building design-build projects have been performed.

(3) Qualifications of personnel who will manage the design and construction aspects of the project.

(4) The names and qualifications of the primary design consultants and contractors with whom the building design-builder proposes to subcontract. The building design-builder may not replace an identified subcontractor or subconsultant without the written approval of the board.

(5) Firms submitting a statement of qualifications shall be capable of providing a public works bond in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bonding capability to the board with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection.

(d) The board shall evaluate the qualifications of all proposers in accordance with the instructions prescribed in the request for qualifications. A short list of qualified proposers selected by the evaluation team may proceed to phase II of the selection process. Proposers lacking the necessary qualifications to perform the work shall be disqualified and shall not proceed to phase II of the process. Under no circumstances shall price or fees be considered as a part of the prequalification criteria. Points assigned in the phase I evaluation process shall not carry forward to phase II of the process. All qualified proposers shall be ranked on points given in phases II and III only. The two-phase evaluation and scoring process shall be combined to determine the greatest value to the county.

(e) The board shall prepare a short list containing a minimum of three, but no more than the top five qualified proposers to participate in phase II of the process. If less than four proposers respond, all proposers shall be invited to participate in phase II of the selection process.

(f) Phase II of the process shall be conducted as follows:

(1) The remaining project requirements will be provided to the short listed proposer to include the following:

(A) The terms and conditions for the building design-build contract.

(B) The design criteria package.

(C) A description of the drawings, specifications or other information to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications or other information that will be acceptable.

(D) A schedule for planned commencement and completion of the building design-build contract.

(E) Budget limits for the building design-build contract, if any.

(F) Requirements, including any available ratings for performance bonds, payment bonds and insurance.

(G) Any other information that the county at its discretion chooses to supply, including without limitation, surveys, soil reports, drawings of existing structures, environmental studies, photographs or references to public records.

(2) Proposers shall submit their design for the project to the level of detail required in the request for proposal. The design proposal should demonstrate compliance with the requirements set out in the request for proposal.

(3) The technical proposal may contain certain limited references to specific elements of the cost.

(4) The technical submittals shall be evaluated and assigned points in accordance with the requirements of the request for proposal.

(g) Phase III shall be conducted as follows:

(1) The phase III proposal shall provide a firm fixed cost of design and construction. The proposal shall be accompanied by bid security and any other submittals as required by the request for proposal.

(2) The proposed contract time, in calendar days, for completing a project as designed by a proposer may be considered as an element of evaluation in phase III. In the event the request for proposal shall establish the assignment of value of contract time in the selection process.

(3) Phase III proposals shall be submitted in accordance with the instructions of the request for proposal. Failure to submit a cost proposal

on time shall be cause to reject the proposal.

(h) Proposals for phase II and III shall be submitted concurrently at the time and place specified in the request for proposal. The phase III cost proposals shall be opened only after the phase II technical proposals have been evaluated and assigned points.

(i) Phase III cost and schedule, which shall prescribe the number of calendar days, proposals shall be opened and read aloud at the time and place specified in the request for proposal. At the same time and place, the evaluation team shall make public its scoring of phase II. Phase III shall be evaluated in accordance with the requirements of the request for proposal. In evaluating the proposals and determining the successful proposer, each proposers' score shall be determined in a quantifiable and objective manner described in the request for proposal in combination of the points earned in both phase II and phase III.

(j) The successful responsive proposer shall be awarded the contract. If the board determines, that it is not in the best interest of the county to proceed with the project pursuant to the proposal offered by the successful proposer the board shall reject all proposals. If the determination to reject all proposals is made for the convenience of the board, the successful and responsive proposer shall receive twice the stipend pursuant to subsection (g)(8) of this section and amendments thereto, of this act, and all other responsive proposers shall receive an amount equal to such stipend. If the determination is made to reject all proposals as a result of proposals exceeding the budget published in the request for proposals or otherwise not complying with the request for proposal, the board need not remit a stipend to the proposers.

(k) If all proposals are rejected, the board may solicit new proposals using different design criteria, budget constraints or qualifications.

(l) As an inducement to qualified proposers, the board shall pay a stipend, the amount of which shall be established in the request for proposal, to each prequalified building design-builder whose proposal is responsive but not accepted. Upon payment of the stipend to any unsuccessful building design-build proposer, the county shall acquire a nonexclusive right to use the design submitted by the proposer, and the proposer shall have no further liability for its use by the county in any manner. If the building design-build proposer desires to retain all rights and interest in the design proposed, the proposer shall forfeit the stipend.

New Sec. 6. Every proposal received from each phase of procurement, including total scores and total rankings shall, after award or letting of the contract, be subject to public inspection upon request.

Sec. 7. K.S.A. 19-214 is hereby amended to read as follows: 19-214.

(a) Except as provided in subsection (b) ~~and~~, in K.S.A. 19-216a, *and amendments thereto*, all contracts for the expenditure of county moneys for the construction of any courthouse, jail or other county building, or the construction of any bridge, *highway, road, dam, turnpike or related structures or stand-alone parking lots* in excess of ~~\$10,000~~ \$25,000, shall be awarded, on a public letting, to the lowest and best bid. The person, firm or corporation to whom the contract may be awarded shall give and file with the board of county commissioners a good and sufficient surety bond by a surety company authorized to do business in the state of Kansas, to be approved by the county attorney or county counselor, in the amount of the contract, and conditioned for the faithful performance of the contract.

(b) The provisions of subsection (a) shall not apply: (1) To the expenditure of county funds for professional services; (2) to the provisions of K.S.A. 68-521, and amendments thereto; or (3) to the purchase of contracts of insurance.

Sec. 8. K.S.A. 2007 Supp. 68-521 is hereby amended to read as follows: 68-521. (a) The board of county commissioners before awarding any contract for the construction, surfacing, repairing or maintaining of any road as provided in K.S.A. 68-520, and amendments thereto, when the county engineer's estimated cost of such improvement is more than ~~\$10,000~~ \$25,000, shall have the approved plans and specifications which have been adopted by order of the board for such work filed in the county clerk's office or in some other county office designated by the board at least 20 days prior to the time of the letting.

The county clerk or some other county officer designated by the board shall give not less than 20 days' notice of the letting by publication in at least two consecutive weekly issues of the official county paper, the first

publication of such notice to be not less than 20 days prior to such letting. The notice shall specify with reasonable minuteness the character of the improvement contemplated, where it is located, the kind of material to be used, the hour, date and place of letting of such contract, when the work is to be completed, and invite sealed proposals for the same. Such other notice may be given as the board may deem proper. All bids shall be made on the proposal blanks furnished by the county, signed by the bidder, sealed and delivered, or sent by mail, by the bidder, or the agent or attorney thereof, to the county clerk or to some other county officer designated by the board. The letting of all contracts shall be conducted in such manner as to give free, open competition, and all qualified bidders, shall be given an equal opportunity to bid upon the plans and specifications on file. Each bidder shall be required to accompany the submitted bid with a bid surety in an amount equal to 5% of the bid amount in the form prescribed by the board as a guarantee that, if the contract is awarded to the bidder, the bidder will enter into the contract with the board. If a bidder fails to enter into the contract when awarded to the bidder, the bid surety shall become the property of the county as its liquidated damages and shall be paid to the county treasurer for credit to the general fund of the county, and the board may award the contract to the next lowest responsible bidder. The bids shall be opened publicly by the board or a designee thereof at the place, date and hour named in the advertising notice, and all bids shall be considered, and accepted or rejected.

In case the work is let at such public letting or thereafter, the contract shall be awarded to the lowest responsible bidder, or the board, if it deems the proposals too high, may reject all bids, and readvertise the work as before. No such contract shall be let at an amount exceeding 110% of the county engineer's estimated cost of the work. No such contract shall be considered as awarded unless the contractor shall within 21 days after the letting enter into contract and shall give the bond required by K.S.A. 60-1111, and amendments thereto, and a performance bond to the county in a penal sum equal to the amount of the contract price, conditioned upon the faithful performance of the contract, payable to the county upon failure to comply with the terms of the contract. The contractor shall file with the county clerk the bonds, which shall be approved by the chairperson of the board and the county attorney by their signatures indorsed thereon.

(b) The provisions of subsection (a) shall not apply to contracts for the expenditure of county moneys for the reconstruction or repair of a road if:

- (1) The road has been damaged or destroyed as a result of a disaster;
- (2) the governor has declared the county, or that part of the county in which the road is located, a disaster area;
- (3) the board of county commissioners finds that a hardship would result if the road is not immediately reconstructed or repaired;
- (4) the board of county commissioners has obtained an estimate of the cost of the reconstruction or repair of the road from the county engineer. If there is no county engineer, the board shall obtain such estimate from the Kansas department of transportation; and
- (5) the contract for the reconstruction or repair of the road is awarded within 60 days of the governor's declaration required by paragraph (2).

(c) The county attorney or county counselor shall meet with and advise the board of county commissioners in all matters pertaining to letting and making of all contracts under this act. The board may make partial payments, on the written estimate of its county engineer, upon any contract work as the same progresses, but not more than 95% of the estimate of the materials furnished and work done, or of the contract price, shall be paid in advance of the full and satisfactory completion of the contract. Final payment shall not be made on any such contract until the county engineer has inspected the work and certified in writing that it has been properly done and completed in accordance with the contract, plans and specifications, and the county engineer's certificate to that effect has been filed in the office of the county clerk or some other county officer designated by the board.

New Sec. 9. Sections 9 through 14, and amendments thereto, shall be known and may be cited as the Kansas unified school district alternative project delivery building construction procurement act.

New Sec. 10. As used in the Kansas unified school district alternative

project delivery construction procurement act, unless the context expressly provides otherwise:

(a) “Act” means the Kansas unified school district alternative project delivery building construction procurement act.

(b) “Board” means board of education of every unified school district in Kansas, as defined in K.S.A. 72-8201, and amendments thereto, with the authority to award public contracts for building design and construction.

(c) “Alternative project delivery” means an integrated comprehensive building design and construction process, including all procedures, actions, sequences of events, contractual relations, obligations, interrelations and various forms of agreement all aimed at the successful completion of the design and construction of buildings and other structures whereby a construction manager or general contractor is selected based on a qualifications and best value approach.

(d) “Ancillary technical services” include, but shall not be limited to, geology services and other soil or subsurface investigation and testing services, surveying, adjusting and balancing air conditioning, ventilating, heating and other mechanical building systems and testing and consultant services that are determined by the board to be required for the project.

(e) “Architectural services” means those services described by subsection (e) of K.S.A. 74-7003, and amendments thereto.

(f) “Best value selection” means a selection based upon project cost, qualifications and other factors.

(g) “Building construction” means furnishing labor, equipment, material or supplies used or consumed for the design, construction, alteration, renovation, repair or maintenance of a building or structure. Building construction does not include highways, roads, bridges, dams, turnpikes or related structures or stand-alone parking lots.

(h) “Construction services” means the process of planning, acquiring, building, equipping, altering, repairing, improving or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property, excluding stand-alone parking lots.

(i) “Construction management at-risk services” means the services provided by a firm which has entered into a contract with the board to be the construction manager or general contractor for the value and schedule of the contract for a project, which is to hold the trade contracts and execute the work for a project in a manner similar to a general contractor, and which is required to solicit competitive bids for the trade packages developed for the project and to enter into the trade contracts for a project with the lowest responsible bidder therefor. Construction management at-risk services may include, but are not limited to scheduling, value analysis, system analysis, constructability reviews, progress document reviews, subcontractor involvement and prequalification, subcontractor bonding policy, budgeting and price guarantees and construction coordination.

(j) “Construction management at-risk contract” means the contract whereby the board acquires from a construction manager or general contractor a series of preconstruction services and an at-risk financial obligation to carry out construction under a specified cost agreement.

(k) “Construction manager or general contractor” means any individual, partnership, joint venture, corporation, or other legal entity who is a member of the integrated project team with the board, design professional and other consultants that may be required for the project, who utilizes skill and knowledge of general contracting to perform preconstruction services and competitively procures and contracts with specialty contractors assuming the responsibility and the risk for construction delivery within a specified cost and schedule terms including a guaranteed maximum price.

(l) “Cost plus guaranteed maximum price contract” means a cost-plus-a-fee contract with a guaranteed maximum price. This includes the sum of the construction manager’s fee, the construction manager’s contingency, the construction manager’s general conditions, all the subcontracts, plus an estimate for unbid subcontracts. The construction manager agrees to pay for costs that exceed the guaranteed maximum price and are not a result of changes in the contract documents.

(m) “Engineering services” means those services described by subsection (i) of K.S.A. 74-7003, and amendments thereto.

(n) “Guaranteed maximum price” means the cost of the work as de-



fined in the contract.

(o) "Selection recommendation committee" means school board or a committee appointed by the school board.

(p) "Parking lot" means a designated area constructed on the ground surface for parking motor vehicles. A parking lot included as part of a building construction project shall be subject to the provisions of this act. A parking lot designed and constructed as a stand-alone project shall not be subject to the provisions of this act.

(q) "Preconstruction services" means a series of services that can include, but are not necessarily limited to: Design review, scheduling, cost control, value engineering, constructability evaluation and preparation and coordination of bid packages.

(r) "Project services" means architectural, engineering services, land surveying, construction management at-risk services, ancillary technical services or other construction-related services determined by the board to be required by the project.

(s) "Public construction project" means the process of designing, constructing, reconstructing, altering or renovating a unified school district building or other structure. Public construction project does not include the process of designing, constructing, altering or repairing a public highway, road, bridge, dam, turnpike or related structure.

New Sec. 11. (a) Notwithstanding any other provision of the law to the contrary, the board is hereby authorized to institute an alternative project delivery program whereby construction management at-risk procurement processes may be utilized on public projects pursuant to this act. This authorization for construction management at-risk procurement shall be for the sole and exclusive use of planning, acquiring, designing, building, equipping, altering, repairing, improving or demolishing any structure or appurtenance thereto, including facilities, utilities or other improvements to any real property, but shall not include stand-alone parking lots.

(b) The board may only approve those projects for which the use of the alternative project delivery procurement process is appropriate. In making such determination, the board shall consider the following factors:

(1) The likelihood that the alternative project delivery method of procurement selected will serve the public interest by providing substantial savings of time or money over the traditional design-bid-build delivery process.

(2) The ability to overlap design and construction phases is required to meet the needs of the end user.

(3) The use of an accelerated schedule is required to make repairs resulting from an emergency situation.

(4) The project presents significant phasing or technical complexities, or both, requiring the use of an integrated team of designers and constructors to solve project challenges during the design or preconstruction phase.

(5) The use of an alternative project delivery method will not encourage favoritism in awarding the public contract or substantially diminish competition for the public contract.

(c) When a board intends to utilize an alternative project delivery method, the board shall allow public comment on this intention at a school board meeting. Notice of this intention shall be clearly stated on the board agenda and in the official newspaper of the school district. Public comment on this intention at a board meeting shall occur before the selection process set forth in this statute may commence.

(d) Notwithstanding the provisions of K.S.A. 72-6760, and amendments thereto, if the board deems that the project does not qualify for the alternative project delivery method included under this act, then the construction services for such project shall be obtained pursuant to competitive bids and all contracts for construction services shall be awarded to the lowest responsible bidder consistent with the provisions of K.S.A. 72-6760, and amendments thereto.

New Sec. 12. Construction management at-risk project delivery procedures shall be conducted as follows:

(a) The board shall determine the scope and level of detail required to permit a qualified construction manager or general contractor to submit construction management at-risk proposals in accordance with the request for proposals given the nature of the project.

(b) Prior to completion of the construction documents, or as early as

during the initiation of the project, the construction manager or general contractor shall be selected. The project design professional may be employed or retained by the board to assist in the selection process.

(c) The board shall publish a notice of the request for qualifications and proposals for the required project services at least 15 days prior to the commencement of such requests in the official newspaper of the school district and with a statewide school board or construction industry association website in accordance with K.S.A. 64-101, and amendments thereto, and in such other appropriate manner as may be determined by the board.

(d) The board shall solicit proposals in a three stage qualifications based selection process. Phase I shall be the solicitation of qualifications and prequalifying a minimum of three but no more than five construction manager or general contractors to advance to phase II. Phase II shall be the solicitation of a request for proposal for the project, and phase III shall include an interview with each proposer to present their qualifications and answer questions.

(1) Phase I shall require all proposers to submit a statement of qualifications which shall include, but not be limited to:

(A) Similar project experience;  
(B) experience in this type of project delivery system;  
(C) references from design professionals and owners from previous projects;

(D) description of the construction manager or general contractor's project management approach; and

(E) bonding capacity. Firms submitting a statement of qualifications shall be capable of providing a public works bond in accordance with K.S.A. 60-1111, and amendments thereto, and shall present evidence of such bonding capacity to the board with their statement of qualifications. If a firm fails to present such evidence, such firm shall be deemed unqualified for selection under this subsection.

(2) The board shall evaluate the qualifications of all proposers in accordance with the instructions of the request for qualifications. The board shall prepare a short list containing a minimum of three and maximum of five qualified firms, which have the best and most relevant qualifications to perform the services required of the project, to participate in phase II of the selection process. If the board receives qualifications from less than four proposers, all proposers shall be invited to participate in phase II of the selection process. The board shall have discretion to disqualify any proposer that, in the board's opinion, lacks the minimal qualifications required to perform the work.

(3) Phase II of the process shall be conducted as follows:

(A) Prequalified firms selected in phase I shall be given a request for proposal. The request for proposal shall require all proposers to submit a more in depth response including, but not be limited to:

(i) Company overview;  
(ii) experience or references, or both, relative to the project under question;

(iii) resumes of proposed project personnel;  
(iv) overview of preconstruction services;  
(v) overview of construction planning;  
(vi) proposed safety plan;  
(vii) fees, including fees for preconstruction services, fees for general conditions, fees for overhead and profit.

(4) Phase III shall be conducted as follows:

(A) Once all proposals have been submitted, the selection recommendation committee shall interview all of the proposers, allowing the competing firms to present their proposed team members, qualifications, project plan and to answer questions. Interview scores shall not account for more than 50% of the total possible score.

(B) The selection recommendation committee shall select the firm providing the best value based on the proposal criteria and weighting factors utilized to emphasize important elements of each project for approval by the board. All scoring criteria and weighting factors shall be identified by the board in the request for proposal instructions to proposers. The selection recommendation committee shall proceed to negotiate with and attempt to enter into contract with the firm receiving the best total score to serve as the construction manager or general contractor for the project. Should the selection recommendation committee

be unable to negotiate a satisfactory contract with the firm scoring the best total score, negotiations with that firm shall be terminated, and the committee shall undertake negotiations with the firm with the next best total score, in accordance with this act.

(C) If the selection recommendation committee determines, that it is not in the best interest of the board to proceed with the project pursuant to the proposals offered, the selection recommendation committee shall reject all proposals. If all proposals are rejected, the board may solicit new proposals using different design criteria, budget constraints or qualifications.

(D) The contract to perform construction management at-risk services for a project shall be prepared by the board and entered into between the board and the firm performing such construction management at-risk services. A construction management at-risk contract utilizing a cost plus guaranteed maximum price contract value shall return all savings under the guaranteed maximum price to the school district.

(E) The board or the construction manager at-risk, at the board's discretion shall publish a construction services bid notice in the official newspaper of the school district and website of a statewide school board association or construction industry association and in such other appropriate manner for the construction manager or general contractor as may be determined by the board. Each construction services bid notice shall include the request for bids and other bidding information prepared by the construction manager or general contractor and the board. The board may allow the construction manager or general contractor to self-perform construction services provided the construction manager or general contractor submits a sealed bid proposal under the same conditions as all other competing firms. At the time for opening the bids, the construction manager or general contractor shall evaluate the bids and shall determine the lowest responsible bidder except in the case of self-performed work for which the board shall determine the lowest responsible bidder. The construction manager or general contractor shall enter into a contract with each firm performing the construction services for the project and make a public announcement of each firm selected at the first school board meeting following the selection.

New Sec. 13. Every bid proposal conforming to the terms of the advertisement, together with the name of the proposer, shall be recorded, and all such records with the name of the successful proposer indicated thereon shall, after award or letting of the contract, be subject to public inspection upon request. The board shall, within five days after award or letting of the contract, publish the name of the successful proposer. The public notice on public display shall show the phase II and III scores and the adjusted final score. The board shall, within five days after award or letting of the contract, have the names of all proposers whose bid proposals were not selected, together with phase II and III scores and the final adjusted score for each, available for public review.

New Sec. 14. The provisions of the Kansas unified school district alternative project delivery building construction procurement act shall not apply to the process of designing, constructing, altering or repairing stand-alone parking lots.

Sec. 15. K.S.A. 19-214 and K.S.A. 2007 Supp. 68-521 are hereby repealed.

Sec. 16. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 13, 2008.

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